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No. 362

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1957

GRAHAME THOMAS SMALLWOOD, JR., *et al, Petitioners*

v.

VIOLA A. HODSON, *et al, Respondents*

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

## BRIEF FOR RESPONDENTS IN OPPOSITION

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# INDEX


| | Page |
|---|---|
| Opinions Below | 1 |
| Jurisdiction | 2 |
| Record | 2 |
| Question Presented | 2 |
| Counter-Statement of the Cases | 3 |
| Reasons for Not Granting the Writ | 14 |
| Conclusion | 18 |


## Cases Cited


Clamos v. United States, 82 U.S. App. D.C. 278, 163 F. 2d 593 ..... 18

New York Life Ins. Co. v. Taylor, 79 U.S. App. D.C. 66, 70, 75-80; 147 F. 2d 297, 301, 306-311 ..... 1

Palmer v. Hoffman, 318 U.S. 109, 63 S. Ct. 477, 87 L. Ed. 645 (rehearing denied; 318 U.S. 800, 63 S. Ct. 757, 87 L. Ed. 1163) ..... 18


## Rules


61 Fed. R. Civ. P. ..... 17

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and ELEANOR BEASLEY NIEBELL, *Petitioners*

v.

VIOLA A. HODSON, and MARGARET HYNSON STUDT,
*Respondents*

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## BRIEF FOR RESPONDENTS IN OPPOSITION

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### OPINIONS BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit is correctly reported in the appendix to Petitioners' Petition for Writ of Certiorari filed herein. The comments of the

District Court in rendering its decision in the equity case are printed in full in Respondents' Counter-Statement of the cases hereafter.

## JURISDICTION

The statements of jurisdiction of this Court and of the Courts below are adequately recited in the Petition.

## RECORD

In addition to all printed appendices the original District Court transcript and all original exhibits which were before the Court of Appeals have been transmitted to this Court. The places where the statements of facts set forth in the Counter-Statement of cases appear in the Record are cited as follows: TR— original transcript; P. Ex. petitioners-appellants-plaintiffs' original exhibit; D. Ex. respondent-appellee-defendants' original exhibit; App. petitioners' printed appendix in the Court of Appeals; App. S. petitioners' printed supplemental appendix in the Court of Appeals; Appees. respondents' printed appendix in the Court of Appeals; Appees. S. respondents' printed supplemental appendix in the Court of Appeals.

## QUESTION PRESENTED

The will and deed of Geare were executed by her on February 2, 1934. Seven witnesses testified as to her soundness of mind on that day and that she was under no constraint. None testified contra. None of the Petitioners testified at all though present in the courtroom throughout the trial. Considerable relevant factual hospital record data was admitted into evidence (Appees. S. 1-7) as to period April 18,

through April 30, 1954 when Geare was in Emergency Hospital. She later was in St. Elizabeth's Hospital one week from April 30, 1954 through May 6, 1954. Two physicians from St. Elizabeths Hospital also testified. Respondent Hodson was cross-examined at length as an adverse witness in the light of the foregoing evidence. She was also cross-examined relative to statements made by her to an official at St. Elizabeth's Hospital relative to Geare's history. Petitioners did not produce the official but sought to contradict her by introducing an unsigned Form dated May 6, 1954 (App. 32) from St. Elizabeth's Hospital files, containing other than routine entries and statements which generally appeared elsewhere throughout the trial and were merely corroborative even if admitted. The question is: Was it harmless error to exclude such evidence under Rule 61 Fed. R. Civ. P.?

## COUNTER-STATEMENT OF THE CASES
### No. 13,201

Petitioners, appellants below, were unsuccessful plaintiffs in the United States District Court for the District of Columbia in a suit to set aside a deed, dated February 2, 1954, conveying a residential parcel of real estate, subject to a substantial secured indebtedness, known as 3047 Porter Street, N. W., in the District of Columbia, from Dorothy Smallwood Geare, grantor, to Viola A. Hodson, grantee, and for an accounting. Hodson was a long time intimate friend of Geare and had agreed with the latter to convey an undivided one-half interest in the equity in this realty when she received it to Margaret Hynson Studt the god-child of Geare and also her close friend. Hodson carried out this agreement on April 13, 1954 by conveying an undivided one-half interest in this realty to